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9 MARTIN FRANCHISES, INC.

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA

12 ESTATE OF VIOLA B. SPAULDING;
13 FLORENCE SPAULDING, trustee;
14 LYNN SPAULDING, doing business as
15 Spaulding Enterprises; and TINA
16 SPAULDING WARD, doing business as
17 Spaulding Enterprises, THE
18 CONSERVATORSHIP OF EILEEN
19 SPAULDING,

20 Plaintiffs,

21 v.

22 YORK CLEANERS, INC., a dissolved
23 California corporation; ESTATE OF
24 BARNARD LEWIS, DECEASED;
25 DAVID VICTOR LEWIS, an individual;
26 MARTIN FRANCHISES, INC., an Ohio
27 corporation; SETH R. DOLE, an
28 individual; and RUTH DOLE, an
individual; and DOES 1 through 100,

Defendants.

CASE NO. C 08-00672 CRB

**COUNTERCLAIM OF MARTIN
FRANCHISES, INC.**

Pursuant to Rule 13(a) of the Federal Rules of Civil Procedure, Counterclaimant Martin Franchises, Inc. ("Martin") hereby alleges its counterclaims for relief against YORK CLEANERS, INC., a dissolved California corporation; ESTATE OF BARNARD LEWIS, DECEASED; DAVID VICTOR LEWIS, an individual; SETH R. DOLE, an individual; and

1 RUTH DOLE, an individual; and DOES 1 through 100 as follows:

2 **PARTIES**

3 1. Counterclaimant Martin, at all times relevant hereto, was an Ohio corporation
4 registered to do business in the State of California.

5 2. York Cleaner, Inc., is a dissolved California corporation that operated a dry-
6 cleaning business at the Property from approximately 1977 until it dissolved in 1987.

7 3. Estate of Barnard Lewis, Deceased, is named as a defendant herein pursuant to
8 California Code of Civil Procedure section 377.40 to the extent of the estate's assets and
9 pursuant to California Probate Code sections 550 through 555 to establish the decedent's liability
10 for which he was protected by certain liability insurance policies. Barnard Lewis first operated a
11 dry-cleaning business at the Property under the One Hour Martinizing franchise in or around the
12 1960s and then independently operated the dry-cleaning business as "York Cleaners." Barnard
13 Lewis died on December 30, 2007.

14 4. David Victor Lewis is an individual who operated a dry-cleaning business at the
15 Property known as "York Cleaners." On information and belief, David Victor Lewis is his
16 father's Barnard Lewis, personal representative or successor in interest.

17 5. Seth R. Dole is an individual who operated a dry-cleaning business at the
18 Property under the One Hour Martinizing franchise in or around the 1960s.

19 6. Ruth Dole is an individual who operated a dry-cleaning business at the Property
20 under the One Hour Martinizing franchise in or around the 1960s.

21 **JURISDICTION, VENUE**

22 7. This court has jurisdiction over the subject matter of the complaint and this
23 counterclaim based on Spaulding's First Cause of Action, under 42 U.S.C. § 6972(a), and under
24 §§ 107 and 113 of the Comprehensive Environmental Response Compensation and Liability Act
25 ("CERCLA"), 42 U.S.C. §§ 9607 and 9613. Additionally, this Court has jurisdiction over the
26 other causes of action in plaintiffs' complaint under 28 U.S.C. § 1367.

27 8. Venue is proper in this Court pursuant to section 113(b) of CERCLA, because the
28 plaintiffs allege release and damage occurred in this District. Furthermore, venue is proper

1 pursuant to section 7002(a) of RCRA, 42 U.S.C. § 6972(a), and 28 U.S.C. § 1391(b) because the
2 actual and threatened endangerment that is alleged by plaintiffs allegedly took place in this
3 District.

4 9. Plaintiffs have alleged that they have satisfied all jurisdictional and venue
5 prerequisites to filing this complaint.

6 **GENERAL ALLEGATIONS**

7 10. For allegation purposes only, and without admitting any of the allegations,
8 Counterclaimant herein, Martin, incorporates paragraphs 22 through 29 of the complaint filed in
9 this case number, C 08-00672, as though set forth in full herein, but again, without making any
10 admissions to the allegations thereto.

11 **FIRST CAUSE OF ACTION**
12 **(Indemnity)**

13 11. Counterclaimant Martin incorporates and realleges herein by reference the
14 allegations contained in paragraphs 1 through 10 of this counterclaim.

15 12. A determination of the proportionate degree of liability, if any, of
16 Counterclaimant, on the one hand, and counter-defendants, on the other, is necessary to protect
17 the rights of cross-complainant.

18 13. An actual controversy has arisen and now exists relating to the legal rights and
19 duties of Countercomplainant and counter-defendants, and each of them, for which
20 Countercomplainant desires a declaration of their rights and indemnification, in which
21 Countercomplainant contends, and countercomplainant is informed and believes that counter-
22 defendants deny, the following:

23 A. That as between these parties, the responsibility, if any, for the damages claimed
24 by plaintiff rests entirely on counter-defendants;

25 B. That as a result, counter-defendants are obligated to partially indemnify or fully
26 indemnify Countercomplainant for sums that Countercomplainant may be held to pay as a result
27 of any damages, judgments, settlement or other awards recovered against Countercomplainant by
28 the Court, federal or state government, or private party as a result of the toxic chemical

1 contamination of the Property, properties near and adjacent properties including, but not limited
2 to, surface and subsurface soil and water; and

3 C. Countercomplainant is informed and believes that counter-defendants deny any
4 such liability.

5 14. Countercomplainant is entitled to, and hereby requests, a judicial determination of
6 Countercomplainant's rights, indemnification and contribution, any declaration that counter-
7 defendants and/or others, and not Countercomplainant, is liable for all of the costs incurred, and
8 to be incurred to remove, clean-up and remediate the alleged hazardous substance contamination
9 of the soil and groundwater in and around the Property.

10 **SECOND CAUSE OF ACTION**
11 **(Contribution)**

12 15. Martin realleges and incorporates herein by reference the allegations contained in
13 paragraphs 1 through 14 of this counterclaim.

14 16. In the event liability should be established on the part of Counterclaimant, which
15 liability is expressly denied, Countercomplainant is informed and believes, and thereon alleges,
16 that it may be obligated to pay sums representing a percentage of liability not
17 Countercomplainant's own, but rather that of counter-defendants. Therefore,
18 Countercomplainant requests an adjudication and determination with respect to degrees of
19 liability, if any, on its part and on the part of counter-defendants so as to determine that portion
20 of the amount, if any, by which Countercomplainant is found liable, which actually represents a
21 portion of liability of all of the counter-defendants.

22 WHEREFORE, with regard to this counterclaim, Martin prays for entry of judgment as
23 follows:

24 1. For entry of judgment in favor of Martin against counter-defendants for
25 indemnification, thus entitling Martin to full defense and indemnification, including all
26 compensatory damages, attorneys' fees, taxable costs, and for such other and further relief as this
27 Court may deem just and proper.

28 2. For entry of judgment on the second cause of action by Martin against counter-

